

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

IN RE:)
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)
EASTERN LIVESTOCK CO., LLC,) Case No. 10-93904-BHL-11
)
)
Debtor.) Hon. Basil H. Lorch III

**AMENDED MOTION TO APPROVE COMPROMISE AND SETTLEMENT WITH
TAMMY GIBSON; GIBSON CATTLE COMPANY, L.L.C.; GP CATTLE COMPANY,
LLC; GRANT GIBSON, individually, and d/b/a GP CATTLE COMPANY
and d/b/a GP CATTLE; and JOHN F. GIBSON**

Pursuant to Federal Rule of Bankruptcy Procedure 9019, James A. Knauer, as chapter 11 trustee (the "Trustee") for the estate of Eastern Livestock Co., LLC ("Debtor"), by counsel, respectfully moves the Court to approve the compromise and settlement of claims between the Trustee and Tammy Gibson; Gibson Cattle Company, L.L.C; GP Cattle Company, LLC; Grant Gibson, individually, and d/b/a GP Cattle Company and d/b/a GP Cattle; and John F. Gibson. In support of this motion (the "Settlement Motion"), the Trustee states as follows:

Introduction and Background

1. Certain petitioning creditors commenced the above-captioned chapter 11 case ("Chapter 11 Case") on December 6, 2010. The Court entered the *Order For Relief in An Involuntary Case and Order to Complete Filing* [Docket No. 110] on December 28, 2010.
2. On December 27, 2010, the Court entered the *Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 102] approving the *United States Trustee's Application for an Order Approving the Appointment of James A. Knauer as Chapter 11 Trustee* [Docket No. 98] pursuant to 11 U.S.C. § 1104.

3. Grant P. Gibson ("Grant Gibson") and John F. Gibson ("John Gibson") are the sons of Thomas P. Gibson and Patsy M. Gibson, debtors in Case No. 10-93867 (the "Gibson Bankruptcy") pending in this Court. Tammy Gibson is the wife of Grant Gibson.

4. Gibson Cattle Company, L.L.C. ("Gibson Cattle Company") is a limited liability company organized under Indiana law.

5. GP Cattle, L.L.C. is a limited liability company organized under Indiana law during 2010. Grant Gibson is a member of GP Cattle, LLC and did business as "GP Cattle" prior to forming the limited liability company. Hereinafter, "GP Cattle" refers to Grant Gibson d/b/a GP Cattle, d/b/a GP Cattle Company, and d/b/a GP Cattle, L.L.C.

6. On December 27, 2012, the Trustee filed a complaint against John F. Gibson, individually, that commenced Adversary Proceeding No. 12-59152 (the "John Gibson Adversary Proceeding").

7. On December 27, 2012, the Trustee also filed a complaint against Tammy Gibson, Grant Gibson, Gibson Cattle Company, GP Cattle, and Atkinson Livestock Market, L.L.C., that commenced Adversary Proceeding No. 12-59158 (the "Gibson Cattle Company Adversary Proceeding").

8. On November 29, 2012, Kathryn L. Pry, as chapter 7 trustee in the Gibson Bankruptcy (the "Gibson Trustee" and collectively with the Trustee, the "Trustees"), filed a complaint for turnover against Grant Gibson, John Gibson, Gibson Cattle Company, and GP Cattle that commenced Adversary Proceeding No. 12-59101 (the "Grant Gibson Adversary Proceeding").

9. On November 30, 2012, the Gibson Trustee filed a complaint for turnover against People's Bank & Trust Company of Pickett County, Michael Steven McDonald, and

Tammy T. Gibson that commenced Adversary Proceeding No. 12-59103 (the "Tammy Gibson Adversary Proceeding").

10. The Trustee's claims in Gibson Cattle Company Adversary Proceeding consist mainly of counts under chapter 5 of the Bankruptcy Code, asserting among other claims, approximately \$1.8 Million in preference claims. The Trustee's claims in the John Gibson Adversary Proceeding consist mainly of counts under chapter 5 of the Bankruptcy Code, asserting among other claims, approximately \$155,000 in preference claims.

11. Each of Grant Gibson, Tammy Gibson, John Gibson, Gibson Cattle Company, L.L.C., and G.P. Cattle, L.L.C., by counsel, contacted the Trustee and the Gibson Trustee to discuss settlement of the adversaries filed respectively in this Chapter 11 Case and the Gibson Bankruptcy, conditioned upon the requirement that any settlement cover all of the pending adversaries. The Trustee, along with the Gibson Trustee, agreed, recognizing that absent such a "global settlement," in addition to the expected uncertainties and costs attendant to any litigation, the estates would be exposed to potentially counterproductive competition in prosecuting and collecting any judgments obtained in the pending adversaries.

12. The Trustee has agreed to compromise and settle his claims against Grant Gibson, Tammy Gibson, John Gibson, Gibson Cattle Company, and GP Cattle on the terms and conditions set forth in the *Settlement Agreement and Mutual Release Between Gibson Trustee and ELC Trustee, Grant Gibson, Tammy Gibson, John Gibson, Gibson Cattle Company, L.L.C., and G.P. Cattle, L.L.C.* (the "Settlement Agreement"), a true and accurate copy of which is attached hereto as Exhibit A. The Gibson Trustee likewise has agreed to compromise and settle her claims against Grant Gibson, John Gibson, Gibson Cattle Company and GP Cattle on the

terms and conditions set forth in the Settlement Agreement; the Gibson Trustee independently will seek approval of the Settlement Agreement in the Gibson Bankruptcy.

The Settlement

13. The following is a summary of the key provisions of the Settlement Agreement. Parties should refer to the Settlement Agreement for a full explanation of the proposed settlement.

14. Pursuant to the Settlement Agreement, and in full and final settlement of the "Released Claims" (as that term is defined in the Settlement Agreement), (i) Grant Gibson, Tammy Gibson, Gibson Cattle Company, and GP Cattle agree to pay the Trustees the sum of \$300,000 plus interest (the "Grant Gibson Payment Amount") on or before ten (10) months of execution of the Settlement Agreement in full and final settlement of the "Released Claims" (as that term is defined in the Settlement Agreement), and (ii) John Gibson, agrees to pay the Trustees the sum of \$50,000 (the "John Gibson Payment Amount") on or before sixty (60) days after approval by the Court of the Settlement Agreement.

15. As security for the Grant Gibson Payment, Grant Gibson, individually, and one percent (1%) Class A Member of The Gibson Farm 2, L.L.C. an Indiana limited liability company, ("Gibson Farm 2"), and Tammy Gibson, individually, and as a forty nine percent (49%) Class B member and one percent (1%) Class A Member of Gibson Farm 2, with the consent of the Grant P. Gibson Irrevocable Trust, also a percent (49%) Class B member of Gibson Farm 2, shall cause the execution of a mortgage lien by Gibson Farm 2 in favor of the Trustee and the Gibson Trustee on the approximately 46 acres of undeveloped farm land commonly known as at 7764 State Road 62 East, Lanesville, IN 47136 and titled to Gibson Farm 2 (the "Trustees' Collateral"). Grant Gibson and Tammy Gibson shall also execute an agreed

judgment against Grant Gibson and Tammy Gibson and in favor of the Trustees in the amount of \$300,000.00 ("Agreed Judgment") which document will be held by counsel for the Trustee and will not be filed with the Court or recorded in any county unless and until Grant Gibson and Tammy Gibson fail to pay in full the Grant Gibson Payment Amount on or within ten months of execution of the Settlement Agreement.

16. The Grant Gibson Payment Amount and the John Gibson Payment Amount represent compromises and settlements of various avoidance causes of action under chapter 5 of the Bankruptcy Code asserted by each of the Trustee and Gibson Trustee against Grant Gibson, Tammy Gibson, John Gibson, Gibson Cattle Company and/or GP. The Trustees have agreed to divide the Grant Gibson Payment Amount and the John Gibson Payment Amount between the two estates, with sixty percent (60%) going to the Debtor's estate and forty percent (40%) going to the Gibson Bankruptcy estate.

17. In negotiation of the Settlement Agreement, the Trustee advises that apart from assertion of defenses to the claims of the Trustee and the Gibson Trustee, each of Grant Gibson, Tammy Gibson, Gibson Cattle Company, GP Cattle and John Gibson also demonstrated an inability to pay any substantial judgment against them. Such collection issues ultimately became the central and overwhelming factors driving the settlement negotiations. Counsel for each of the Trustees performed diligent reviews of financial records for these parties. Each of the defendant releasees provided unaudited financial statements, bank records, real estate documents and other evidence. Grant Gibson, Tammy Gibson, and John Gibson also provided sworn affidavits as to their current financial condition (collectively, the "Financial Disclosure Affidavits" (due to confidential financial information, these affidavits are redacted from the Settlement Agreement). The Trustee relied on the representations in Financial Disclosure

Affidavits, and undertook to protect the interests of the Debtor's estate in the event of material omissions or misrepresentations contained any one or all of the Financial Disclosure Affidavits. To that end, Section M of the Settlement Agreement nullifies and voids the Settlement Agreement as to a party if one or both of the Trustees discover within twelve (12) months of execution of the Settlement Agreement that such party has made a fraudulent or otherwise material misrepresentation in their Financial Disclosure Affidavits.

18. The Grant Gibson Payment Amount and John Gibson Payment Amount to be paid to the Trustee for the benefit of the Debtor's estate best represent recoveries on account of preference claims. In accordance with the terms of the confirmed chapter 11 plan in this case, the Trustee shall treat the funds received pursuant to the Settlement Agreement as "Recovery Funds."

Basis for Relief

19. Pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), this Court has authority to approve a compromise or settlement on motion made by the Trustee after notice and opportunity for a hearing.

20. Under Bankruptcy Rule 9019, a bankruptcy court should approve a proposed compromise if it is fair and equitable and in the best interests of the estate. See In re Doctors Hosp. of Hyde Park, Inc., 474 F.3d 421, 426 (7th Cir. 2007); Depoister v. Mary M. Holloway Found, 36 F.3d 582, 586 (7th Cir. 1994); Matter of Energy Co-op, Inc. 886 F.2d 921, 927 (7th Cir. 1989).

21. The Trustee believes that the compromise and settlement reflected in the proposed Settlement Agreement is fair and equitable and in the best interests of the estate. It is the Trustee's view that the estate would incur significant costs in litigating the claims against

the Grant Gibson, Tammy Gibson, John Gibson, GP Cattle Company and GP Cattle. Ultimately, and in reliance on the financial statements, the Financial Disclosure Affidavits, other records and evidence produced and the Trustee's own investigation, the Trustee believes that the Grant Gibson Payment Amount and the John Gibson Payment Amount represent the highest amounts that the Trustee could recover and collect from the defendants, when factoring in the costs of litigation and the financial condition of the defendants.

22. If no objections to this Settlement Motion are filed, the Trustee requests that the Court enter an order approving the Settlement Agreement. If any objections to this Settlement Motion are filed, the Trustee requests that this Settlement Motion and any timely filed objection be scheduled for hearing by the Court on the earliest date that is available and convenient to the Court.

WHEREFORE, the Trustee respectfully requests that the Court enter an order approving the Settlement Agreement attached hereto as Exhibit A and grant the Trustee all other just and proper relief.

Respectfully submitted,

FAEGRE BAKER DANIELS LLP

By: /s/ Kevin M. Toner

Terry E. Hall (#22041-49)
Kevin M. Toner (#11343-49)
Harmony Mappes(#27237-49)
Dustin R. DeNeal (#27535-49)
Kayla D. Britton (#29177-06)
300 N. Meridian Street, Suite 2700
Indianapolis, IN 46204-1782
Telephone: (317) 237-0300
Facsimile: (317) 237-1000
terry.hall@faegrebd.com
kevin.toner@faegrebd.com
harmony.mappes@faegrebd.com
dustin.deneal@faegrebd.com
kayla.britton@faegrebd.com

Counsel for James A. Knauer, Chapter 11 Trustee

Wendy W. Ponader (#14633-49)
600 East 96th Street, Suite 600
Indianapolis, IN 46240
Telephone: (317) 569-9600
Facsimile: (317) 569-4800
wendy.ponader@faegrebd.com

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2013, a copy of the foregoing pleading was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System. Parties may access this filing through the Court's system.

David L. Abt
davidabt@mwt.net

C. R. Bowles, Jr
cbowles@bgdlegal.com

John Hunt Lovell
john@lovell-law.net

Mark A. Robinson
mrobinson@vhrlaw.com

Jeffrey R. Erler
jerler@ghjhlaw.com

Edward M King
tking@fbtlaw.com

Randall D. LaTour
rdlatour@vorys.com

John R. Carr, III
jrcrii@acs-law.com

Bret S. Clement
bclement@acs-law.com

Daniel J. Donnellon
ddonnellan@fclaw.com

Stephen A. Weigand
sweigand@fclaw.com

John Frederick Massouh
john.massouh@sprouselaw.com

John W. Ames
james@bgdlegal.com

Robert Hughes Foree
roberforee@bellsouth.net

Kim Martin Lewis
kim.lewis@dinslaw.com

Jeremy S Rogers
Jeremy.Rogers@dinslaw.com

Ivana B. Shallcross
ishallcross@bgdlegal.com

Deborah Caruso
dcaruso@daleke.com

Meredith R. Thomas mthomas@daleeke.com	William Robert Meyer, II rmeyer@stites.com	Allen Morris amorris@stites.com
Charles R. Wharton Charles.R.Wharton@usdoj.gov	James Bryan Johnston bjtexas59@hotmail.com	James T. Young james@rubin-levin.net
David L. LeBas dlebas@namanhowell.com	Judy Hamilton Morse judy.morse@crowedunlevy.com	John M. Thompson john.thompson@crowedunlevy.com
Suzanne M Shehan suzanne.shehan@kutakrock.com	John Huffaker john.huffaker@sprouselaw.com	Matthew J. Ochs kim.maynes@moyewhite.com
Laura Day Delcotto ldelcotto@dlgfirm.com	Kelly Greene McConnell lisahughes@givenspursley.com	T. Kent Barber kbarber@dlgfirm.com
Ross A. Plourde ross.plourde@mcafeetaft.com	Walter Scott Newbern wsnewbern@msn.com	Kirk Crutcher kcrutcher@mcs-law.com
Todd J. Johnston tjohnston@mcjllp.com	Timothy T. Pridmore tpridmore@mcjllp.com	Theodore A Konstantopoulos ndohbk@jbandr.com
Karen L. Lobring lobring@msn.com	Sandra D. Freeburger sfreeburger@dsf-atty.com	Lisa Koch Bryant courtmail@fbhaw.net
Elliott D. Levin edl@rubin-levin.net	John M. Rogers johnr@rubin-levin.net	John David Hoover jdhoover@hooverhull.com
Sean T. White swhite@hooverhull.com	Jay P. Kennedy jpk@kgrlaw.com	John R. Burns john.burns@faegrebd.com
Michael W. McClain mike@kentuckytrial.com	William E Smith wsmith@k-glaw.com	Kayla D. Britton kayla.britton@faegrebd.com
James Edwin McGhee mcghee@derbycitylaw.com	Thomas C Scherer tscherer@bgdlegal.com	David A. Laird david.laird@moyewhite.com
Jerald I. Ancel jancel@taftlaw.com	Jeffrey J. Graham jgraham@taftlaw.com	Trevor L. Earl tearl@rwsvlaw.com
David Alan Domina dad@dominalaw.com	Kent A Britt kabritt@vorys.com	Joshua N. Stine kabritt@vorys.com
Jill Zengler Julian Jill.Julian@usdoj.gov	Jeffrey L Hunter jeff.hunter@usdoj.gov	Amelia Martin Adams aadams@dlgfirm.com
Michael Wayne Oyler moyer@rwsvlaw.com	Jason W. Cottrell jwc@stuartlaw.com	Robert A. Bell rabell@vorys.com
James E. Rossow jim@rubin-levin.net	James B. Lind jblind@vorys.com	Melissa S. Giberson msgiberson@vorys.com
Steven A. Brehm sbrehm@ bgdlegal.com	Anthony G. Raluy traluy@fbhaw.net	U.S. Trustee ustpregion10.in.ecf@usdoj.gov
Patrick B Griffin pat.griffin@kutakrock.com	Jack S. Dawson jdawson@millerdollarhide.com	Dustin R. DeNeal dustin.deneal@faegrebd.com
Shawna M. Eikenberry shawna.eikenberry@faegrebd.com	Terry E. Hall terry.hall@faegrebd.com	Jay Jaffe jay.jaffe@faegrebd.com
James A. Knauer jak@kgrlaw.com	Erick P. Knoblock eknoblock@daleeke.com	Harmony A. Mappes harmony.mappes@faegrebd.com
Jessica Lynn Olsheski jessica.olsheski@justice-law.net	Shiv Ghuman O'Neill shiv.oneill@faegrebd.com	Wendy W. Ponader wendy.ponader@faegrebd.com
Niccole R. Sadowski nsadowski@thbklaw.com	Eric C. Redman ksmith@redmanludwig.com	Joe T. Roberts jratty@windstream.net
Joseph H. Rogers jrogers@millerdollarhide.com	James E. Smith jsmith@smithakins.com	Christopher E. Baker cbaker@thbklaw.com

Andrew D. Stosberg astosberg@lloydmc.com	Kevin M. Toner kevin.toner@faegrebd.com	Andrea L. Wasson andrea@wassonthornhill.com
Christopher M. Trapp ctrapp@rubin-levin.net	Eric W. Richardson ewrichardson@vorys.com	Joshua Elliott Clubb joshclubb@gmail.com
Jennifer Watt jwatt@kgrlaw.com	Joe Lee Brown Joe.Brown@Hardincounty.biz	Ben T. Caughey ben.caughey@icemiller.com
William K. Flynn wkflynn@straussstroy.com	Thomas P. Glass tpglass@straussstroy.com	Stephen E. Schilling seschilling@straussstroy.com
Michael Benton Willey michael.willey@ag.tn.gov	Kay Dee Baird kbaird@kdlegal.com	David W. Brangers dbrangers@lawyer.com
Chrisandrea L. Turner cturner@stites.com	Paul M. Hoffman phoffmann@stinson.com	Martha R. Lehman mlehman@kdlegal.com
Scott R. Leisz sleisz@bgdlegal.com	Brian H. Meldrum bmeldrum@stites.com	Kevin J. Mitchell kevin.mitchell@faegrebd.com
Terrill K. Moffett kendalcantrell@moffettlaw.com	Natalie Donahue Montell nmontell@bgdlegal.com	Erin Casey Nave enave@taftlaw.com
Matthew Daniel Neumann mneumann@hhclaw.com	Brian Robert Pollock bpollock@stites.com	Steven Eric Runyan ser@kgrlaw.com
Amanda Dalton Stafford ads@kgrlaw.com	Matthew R. Strzynski mstrzynski@kdlegal.com	Andrew James Vandiver avandiver@aswdlaw.com
Chad Duane Wuertz chad@wuertzlaw.com		

/s/ Kevin M. Toner
